

1 moot. (ECF No. 35.) Plaintiff then filed the second amended complaint, which is
2 presently before the Court. (ECF No. 40.)

3 On October 26, 2017, the Magistrate Judge screened the second amended
4 complaint and determined that only the First Amendment interference with mail claim
5 against Franklin was cognizable. He issued findings and recommendations for the action
6 to proceed on the cognizable claim against Defendant Franklin and to dismiss all other
7 claims and defendants with prejudice. (ECF No. 42.) Plaintiff and Defendants Franklin
8 and Ramos filed objections. (ECF Nos. 43, 44.) Plaintiff filed a response to Defendants'
9 objections. (ECF No. 46.)

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
11 conducted a de novo review of this case. Having carefully reviewed the entire file, the
12 Court finds the findings and recommendation to be supported by the record and by
13 proper analysis. The Court concludes the objections are without merit for the reasons
14 stated herein.

15 **II. Defendant Franklin**

16 The Magistrate Judge concluded that Plaintiff stated a cognizable First
17 Amendment claim against Defendant Franklin for deliberate interference with Plaintiff's
18 incoming personal mail.

19 Defendants argue that First Amendment protections for prisoner mail are usually
20 analyzed in the context of access to courts and apply to legal mail. (ECF No. 44 at 3-4).
21 However, although legal mail is subjected to a higher level of scrutiny, legal protections
22 still apply to incoming non-legal mail. See Thornburgh v. Abbott, 490 U.S. 401, 414
23 (1989) (noting that incoming materials in prisons can only be restricted when it is
24 reasonably related to a legitimate penological interest); see also, Turner v. Safley, 482
25 U.S. 78, 84 (1987) (finding that the First Amendment protects incoming personal mail).
26 Defendants further state that Watkins v. Curry C-10-2539 SI (PR), 2001 U.S. Dist. LEXIS
27 34121 (N.D. Cal. Mar. 21, 2011), relied on by the Magistrate Judge, concerned incoming
28 legal mail and therefore is not analogous to the current action. (ECF No. 44 at 4.) This is

1 incorrect. Although the plaintiff in Watkins alleged the letter was legal mail, the judge in
2 that case concluded that the letter was non-legal mail and found a claim on the basis of
3 a single piece of non-legal mail. See Watkins, No. C 10-2539 SI PR, 2011 WL 996802,
4 at *2 (“For § 1983 purposes, Watkins' mail claim will be analyzed as a claim involving
5 **non-legal mail.**”) (emphasis added). Additionally, in Watkins the judge found a First
6 Amendment claim based on the interference with the plaintiff’s mail even though there
7 was no effect on his right to access the court. Id. The Court concludes that Plaintiff’s
8 allegation that two pieces of incoming personal mail were deliberately lost or destroyed
9 is sufficient, at the pleading stage, to state a claim.

10 Defendants also argue that the facts as alleged are too speculative to support
11 finding a claim. (ECF No. 44 at 5.) Plaintiff is proceeding pro se, and his complaint must
12 be liberally construed. See Estelle v. Gamble, 429 U.S. 97, 106 (1976); Hebbe v. Pliler,
13 611 F.3d 1202, 1205 (9th Cir.2010). So construed, Plaintiff’s allegations are sufficient to
14 state a claim against Defendant Franklin. Plaintiff alleges that Defendant Franklin
15 requested CDCR Form 1819 and told Plaintiff that his letter would be released once she
16 was in receipt of the document. Plaintiff alleges that he complied, but did not receive the
17 letter. These allegations support a plausible inference that Defendant Franklin had the
18 ability to return Plaintiff’s mail and deliberately either took action to ensure the mail was
19 not returned or omitted to take an action that would ensure it was returned. This is
20 sufficient, at the pleading stage, to find a cognizable claim. See Ashcroft v. Iqbal, 556
21 U.S. 662, 663 (2009) (“A claim has facial plausibility when the pleaded factual content
22 allows the court to draw the reasonable inference that the defendant is liable for the
23 misconduct alleged.”).

24 **III. Defendant Ramos**

25 The Magistrate Judge concluded that the facts as alleged did not state a
26 cognizable claim against Defendant Ramos.

27 Plaintiff’s objections (ECF No. 43) do not raise an issue of fact or law under the
28 findings and recommendations. Plaintiff alleges that Defendant Ramos did not accept an

1 appeal for his lost letter because Plaintiff did not have the necessary paperwork. Since
2 the paperwork was a requirement of CDCR regulations, Defendant Ramos' actions were
3 in support of a legitimate penological purpose and therefore insufficient to support a
4 claim of retaliation. Additionally, Plaintiff's assertion that Defendants Franklin and Ramos
5 participated in a conspiracy to deprive Plaintiff of his mail appears to be based purely on
6 speculation. The allegations do not state a cognizable claim.

7 Accordingly, it is HEREBY ORDERED that:

- 8 1. The Court adopts the October 26, 2017, findings and recommendation
9 (ECF No. 42) in full;
- 10 2. Plaintiff shall continue to proceed on his First Amendment claim for money
11 damages against Defendant Franklin in her individual capacity;
- 12 3. All other claims asserted in the second amended complaint and all other
13 named Defendants are dismissed with prejudice;
- 14 4. Defendant Franklin shall respond to the second amended complaint within
15 twenty-one days of the date of this order.

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17 IT IS SO ORDERED.

18 Dated: December 7, 2017

/s/ Lawrence J. O'Neill
19 UNITED STATES CHIEF DISTRICT JUDGE
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